



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 12, 1994

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JUL 12 1994

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
Hand Delivered


RM-8491

Re: In the Matter of Petition for Rulemaking
to Adapt the Section 214 Process to the
Construction of Video Dialtone Facilities
DA 94-621

Dear Secretary Caton:

Enclosed please find an original and four (4) copies of
the Comments of the Pennsylvania Public Utility Commission in the
above-captioned matter.

Sincerely,


Maureen A. Scott
Assistant Counsel

MAS/ms
Enclosure

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

I. INTRODUCTION

The Pennsylvania Public Utility Commission ("PaPUC"), pursuant to the Federal Communications Commission's ("FCC's" or "Commission's") public notice¹, hereby submits the following comments on the Petition for Rulemaking ("Petition") filed by the Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of LaRaza ("Petitioners") on May 23, 1994.

Petitioners have raised numerous issues in their Petition regarding the Section 214 application process in connection with the deployment of video dialtone.² In particular, the Petitioners

¹Public Notice, DA 94-621, released June 13, 1994.

²Petitioners note that the Commission in permitting video dialtone, expressly relied on the § 214 application process as the method for handling unresolved video dialtone issues. See, Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, 7 FCC Rcd 5781, 5819-5820 (1992).

are concerned with allegations that the video dialtone proposals currently before the Commission reveal an unacceptable pattern of avoiding low income or minority neighborhoods.³ To remedy this deficiency, the Petitioners request that the Commission's § 214 regulations be modified to include: (1) a specific anti-redlining provision, (2) requirements for carriers to demonstrate that the service will be available to a proportionate number of lower income and minority customers, (3) a means to evaluate whether carriers are complying with the anti-redlining clause including filing requirements with relevant census tract data or race, ethnicity, and income statistics for each exchange served, and, (4) notice and opportunity for hearing at the local level.

The PaPUC strongly supports the Petitioners' request for rulemaking, and, in addition, urges the Commission to at the same time address all other outstanding issues relating to the deployment of video dialtone. With respect to electronic redlining in particular, however, the Commission at a minimum, should take immediate action in the context of pending § 214 applications to investigate any and all allegations of electronic redlining and prohibit its use in the provision not only of video dialtone but all other information age technologies provided by local exchange carriers ("LECs") and other telecommunications providers. Electronic redlining is not supported by either sound public policy or law. The adoption by the Commission of a specific anti-

³The intentional and systematic exclusion of minority or low income populations from a carrier's advanced network deployment or service plans is referred to as "electronic redlining".

redlining provision as requested by the Petitioners may serve to discourage this practice, to the extent it is occurring.

II. ELECTRONIC REDLINING IS NOT SUPPORTED BY EITHER SOUND POLICY CONSIDERATIONS OR THE LAW.

A. Sound Policy Considerations Weigh Against the Use of Electronic Redlining.

Participation in the information superhighway should not be determined by one's income or race. The PaPUC agrees with the Petitioners that the new broadband network may ultimately supplant existing broadcast, cable and telephone service as well as provide valuable new services, and accordingly, must be equally available to all consumers. This is particularly important since as the Petitioners point out "those who are not connected to the new network may be hampered in their ability to take advantage of educational, employment, and even political opportunities."⁴

Participation based upon income or race would inappropriately divide the country into "information haves" and "information have nots". As Petitioners point out, certainly the Clinton Administration and other federal and state lawmakers do not intend this result.

B. Electronic Redlining Is Not Supported By Either Federal or State Law.

While the PaPUC has not had a sufficient opportunity to research all of the relevant legal principles since this proceeding was noticed, the PaPUC believes that electronic redlining would be prohibited under various provisions of both federal and state law.

⁴Petition, p. 2.

As pointed out by the Petitioners, discrimination is prohibited under Sections 202(a) and 214 of the Communications Act of 1934. Moreover, such action may also be prohibited under federal civil rights laws.

Finally, such action may also be prohibited under state constitutions or civil rights laws. Additionally, in Pennsylvania electronic redlining would violate Chapter 30 of the Pennsylvania Public Utility Code since it is inconsistent with the uniform deployment provisions of that Act, most notably the obligation to provide broadband facilities "in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks, and health care facilities."⁵

III. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO INVESTIGATE ALLEGATIONS OF ELECTRONIC REDLINING AND ADDRESS IMPORTANT ISSUES LEFT UNRESOLVED IN THE COMMISSION'S GENERIC VIDEO DIALTONE PROCEEDING.

Because of the seriousness of the issues raised by the Petitioners, the Commission should, at a minimum, immediately undertake an investigation of any and all electronic redlining allegations in the context of existing § 214 proceedings. It is equally important, however, that the Commission immediately address on a generic basis all outstanding issues relating to the provision of video dialtone, including those issues raised by the Petitioners, either in the context of the Commission's existing video dialtone proceeding, through a new rulemaking proceeding, or

⁵See, 66 Pa. C.S. § 3003(b).

both if necessary.

A. The Commission Should Immediately Investigate Electronic Redlining Allegations In the Context of Pending Proceedings.

Some concern has been expressed recently that some carriers may be engaging in electronic redlining in their plans to provide video dialtone service. This concern appears to have arisen primarily because of the § 214 applications filed by some carriers. While the PaPUC has no information to support such allegations at this time, the Commission should take such concerns seriously by taking measures to ensure that this practice is not occurring.

In Pennsylvania, some concern as to the completion of the distribution plant in less economically attractive neighborhoods arose during the course of the PaPUC's consideration of Bell of Pennsylvania's incentive regulation and network modernization plan.⁶ While no specific allegations of "electronic redlining"

⁶Re: Bell Atlantic - Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation Under Chapter 30, Docket No. P-00930715, Opinion and Order, (June 28, 1994) ("It is less clear that the distribution plant in the Philadelphia and Pittsburgh urban exchanges will be complete in certain low income, or ethnic neighborhoods that are not economically attractive. Our observation in this regard is based on the information provided by the OCA regarding the penetration of service among different customer categories. All areas of the Commonwealth, even economically less attractive areas, will, nonetheless, receive their fair share of deployment because of the statutory obligation for the deployment of broadband facilities near public schools, health care facilities, and industrial parks.") Id. at p. 143. It should not be inferred from this discussion, that the PaPUC has any information at the present time to believe that Bell Atlantic is planning to engage in electronic redlining. The PaPUC is still in the process of reviewing Bell Atlantic's § 214 application which was recently filed with the FCC.

were made, the PaPUC believes that the modified plan which it adopted, nonetheless, contains several safeguards designed to minimize the opportunity for electronic redlining in Pennsylvania.⁷

While deployment will in large measure be based upon competitive pressures, consistent with the statute the Company will be required to deploy broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks, and health care facilities, ensuring that all customers have access to these facilities. Moreover, the Company will be held to an extremely aggressive deployment schedule with uniform deployment between suburban, urban and rural areas and full deployment in all areas of the state by the year 2015. Finally, Bell of Pennsylvania will be required under the plan to provide the PaPUC with a detailed three year deployment plan that is to be submitted in advance of the Company's triennial depreciation represcription process. The filing is to include the location for upgrades in switches, the location for the placement of fiber access lines and other upgrades or expansions. The Commission as well as the Company's customers will then be apprised of when they can expect broadband availability in their area to serve their hospitals, schools, businesses and homes, and the Commission can ensure that the Company is meeting its obligations under the plan and Pennsylvania

⁷It should be noted that Bell of Pennsylvania has not yet accepted the modified plan approved by the PaPUC. The Company has until approximately the end of July to accept or reject the plan.

law.⁸

Nonetheless, as the instant Petition illustrates, it will be vital for the Commission and states to work together to ensure that both state and federal objectives, including nondiscriminatory deployment and provision of advanced services, are met.

B. The Commission Should Immediately Address All of The Vital Issues Left Unresolved In Its Generic Video Dialtone Proceeding.

It has been almost two years since the Commission issued its final Report and Order in the generic video dialtone proceeding.⁹ The Commission left unresolved in that proceeding critical issues including, inter alia, cost allocation, pricing, jurisdictional separations and competitive safeguards.¹⁰ Instead, the Commission chose to defer many of these issues to the § 214

⁸Perhaps the PaPUC's position on this issue is best expressed by Commissioner John Hanger in his statement which accompanied the PaPUC's Order on Bell of Pennsylvania's alternative regulation plan which reads in pertinent part: "On June 2, 1994 I stated that 'most importantly this case is about the future of Pennsylvania, because what we do with this case will determine whether all Pennsylvanians have at least access to what has been called the information superhighway, regardless of where they live and what their income is. What we have done with this case insures that all Pennsylvanians will have accelerated access to the information superhighway, regardless of where they live and what their income is. There will be no telecommunications redlining in Pennsylvania based on the kind of community in which a family lives or a family's income."

⁹See, In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-266, adopted: July 16, 1992; released: August 14, 1992.

¹⁰Moreover, the PaPUC and others are also awaiting Commission action on their petitions for reconsideration of the Second Report and Order, which were filed in November, 1992.

application process.

Despite the fact that there have been numerous § 214 applications filed by carriers for the provision of video dialtone since the Commission's Order was issued, the Commission has still not resolved many of these issues to the satisfaction of many industry participants.¹¹ Furthermore, a continuing concern of the PaPUC has been the use of the company specific § 214 process to resolve important industry-wide issues. This results in the piecemeal resolution of important issues of industry-wide concern and raises significant due process concerns since parties oftentimes may not have standing to participate in many cases.

Consequently, the Commission should begin an immediate examination either through its existing video dialtone proceeding or a new generic proceeding to address all outstanding issues of industry-wide concern relating to the provision of this service, including electronic redlining.

IV. CONCLUSION.

For all of the above reasons, the Commission should grant the Petitioner's request for a rulemaking to amend the § 214 application process to ensure all consumers have access to a carrier's advanced network services. The Commission should also at this time address all other unresolved issues of industry-wide concern relating to the provision of video dialtone. Finally, the

¹¹See also, Joint Petition for Rulemaking and Establishment of a Joint Board, filed April 8, 1993, by the Consumer Federation of America and the National Cable Television Association.

Commission should immediately take steps to ensure that existing § 214 applications provide for the deployment of video dialtone and other advanced technologies in a nondiscriminatory and fair manner.

Respectfully submitted,


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Dated: July 12, 1994.